# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of SABIN SPRAGUE-CARVER and CRAIG SPRAGUE-CARVER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KELLIE CARVER,

Respondent-Appellant.

UNPUBLISHED
August 28, 2003

No. 246746
Clare Circuit Court
Family Division
LC No. 01-000185-NA

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). Respondent argues that the trial court erred in finding clear and convincing evidence to support these statutory grounds. We agree with respondent and reverse the trial court's order.

On appeal from termination of parental rights proceedings, this Court reviews the trial court's decision for clear error. MCR 5.974(I);[1] *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Deference is given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g), which provide:

[1] Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new MCR subchapter 3.900. The provisions on termination of parental rights are now found in MCR 3.977. The court rule provision setting forth the "clearly erroneous" standard of review is now found in MCR 3.977(J).

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

In regards to the first statutory ground, the condition that lead to the adjudication was respondent's inability to provide proper care for the premature infants given their medical condition. One of the underlying causes was respondent's failure to appreciate the medical fragility of the children. Therefore, at the time of the termination trial, the court determined that respondent could not properly care for her twins in general and, more specifically, in regards to their continuing special needs, both medically and developmentally.

The parent-agency agreement adopted on October 20, 2001, required respondent to: (1) work with a therapist; (2) cooperate with a homemaker and see her on a weekly basis; (3) demonstrate parenting skills such as providing a safe and nurturing environment and to display competence in bonding techniques, feeding, diaper changes, emotional support, eye contact, communication and the ability to handle both boys at the same time; (4) attend all major medical appointments for the infants; (5) attend school full-time at an alternative education high school; (6) complete a psychological examination; (7) and surround herself with a social support group.

At the time of the termination trial, in January 2003, both children were doing relatively well. Craig's club feet had been repaired, but he would require physical therapy at home. Craig also still showed hypoventilation and was still on an apnea monitor. Sabin showed some developmental delay, probably due to his prematurity and hearing problems, and needed to be closely monitored. Both children exhibited swallowing problems. Their doctor thought that by two years of age the children would have caught up with all of their delays. But, she stressed that they are developmentally fragile and their progress would be dependent on their caregiver's involvement. The twins needed a lot of stimulation and attention, consistency and stability, above that required by other children their age, and their feeding would be time-intensive.

By all accounts, respondent showed definite improvement in her emotional stability and parenting skills, and substantially completed the requirements of the parent-agency service plan. Respondent completed a psychological examination, attended school full-time and was on the honor roll, worked with a therapist, and although at first she did not attend all of the children's medical appointments, respondent later did. The homemaker assigned to respondent observed the supervised visits and stated that respondent was "hands on" and the visits went quite well. Respondent completed her weekly assignments and showed improvement in her ability to handle

the children and in her emotional maturity. A friend of the foster mother testified as to the gradual overall improvement demonstrated by respondent and admitted that after the last few visits, the children seemed content. FIA worker Kathie Chimner testified that respondent had shown "great strides," had gone to school, grown up, become more comfortable in difficult situations and better able to handle herself. She also acknowledged that respondent had changed her depression medication and that she had not personally observed any inappropriate parenting.

But despite respondent's improvement, witnesses expressed reservations regarding respondent's ability to properly care for two small children with special needs without constant assistance. The homemaker opined that she often wondered if respondent could handle a situation where both children were having a problem at the same time, because this had never happened during the visits. Chimner acknowledged that there were fewer "extra" people in the home, which had been a concern, and that respondent had support people "who she has chosen to be helpful." But Chimner was still concerned because these were the same people who were present when the infants were failing to gain weight and because of protective services' involvement with respondent's mother, with whom respondent lives, three times since 1990 for issues of neglect. Additionally, Chimner was concerned with respondent's lack of understanding that her children are more needy than other children and her apparent lack of appreciation of Sabin's hearing problem.

Chimner felt that respondent would be capable of performing in a babysitting capacity, but that she did not have the support to take care of the infants. She believed respondent could parent a single child with no special needs, but that two with special needs was beyond her capability. The doctor who repaired Craig's club feet testified that, based on the few times he met with respondent from September 2001 to August 2002, he did not "feel comfortable with [respondent] being able to manage this child's medical problems." He stated that respondent "does not seem very interested in [Craig's] welfare. She has no concept of what is actually going on with the child. She has no apparent parenting skills."

Our decision in this case is not an easy one. Respondent has done all that has been asked of her, yet this was deemed to be "not enough" by the court. After carefully reviewing the facts presented, we are left with a definite and firm conviction that the trial court erred in concluding that there existed clear and convincing evidence that respondent could not properly care for her children, both medically and developmentally, within a reasonable time.

In the court's written opinion, the court praised the foster parents for their "exemplary care and herculean efforts which have allowed the twins to prosper and thrive," while consistently characterizing respondent's progress as minimal. We agree that the evidence shows respondent is not yet capable of caring for the children on her own; however, at the time of the termination trial, respondent was continuing to work with her therapist and assigned homemaker, attending school and receiving high marks, and demonstrated noticeable improvement in her parenting skills, particularly within the last months before the trial. Respondent has not demonstrated willful neglect, and while initially resistant to the assistance and intervention by the FIA, respondent has continued to mature and improve her parenting skills. Although her progress may be slower than ideal, we are compelled to note that at the time FIA intervened respondent was a sixteen-year old teenage mother of twins who were born two months premature with significant health issues. Moreover, Chimner acknowledged that respondent had complied with all the substantive requirements of the parent-agency agreement. And, as our Supreme

Court recently stated in *In re JK*, *supra* at 214, "[A] parent's compliance with a service agreement is evidence of her ability to provide proper care and custody for the child." [Emphasis in original omitted.]

The most negative testimony was that of the evaluating psychologist, on which the trial court appears to have relied heavily. In his report, the psychologist stated that he did not believe respondent had the intellectual or emotional resources to be a single parent if left to her own resources, and felt that with twenty four-hour help she could function as an older sister. He also stated that respondent could not "grow out" of her post traumatic stress disorder within a reasonable time, and that she would not grow out of her intellectual limits. While we certainly give credence to the psychologist's report, we note that his evaluation occurred before the dispositional hearing in December 2001, which was at the beginning of FIA's intervention services, three months after FIA filed its petition for temporary custody and only one month after the initial service plan was approved, and well-before any noticeable improvement in respondent's skills. In fact, the evidence indicates that the evaluation occurred before respondent became receptive to FIA's assistance, which could possibly explain why the psychologist described respondent as "heavily defended." Additionally, a follow-up evaluation was never conducted after respondent had been receiving FIA's services, nor was any testimony taken from respondent's therapist.

We find that termination of respondent's parental rights was premature. "Within a reasonable time" is an amorphous concept based on the circumstances of each case. The twins' health and growth improved faster than expected, their doctor noting that with proper care the twins could be developmentally caught up with other children their age by this time.[2] So it appears that this is not a case where the children will have permanent time-intensive "special needs." To be sure, respondent has a lot of work ahead of her, and reunification efforts may prove to be unsuccessful, but we believe that respondent should be given the opportunity to continue to work towards this goal. As this Court has stated, "The goal of reunification of the family must not be lost in the laudable attempt of make sure that children are not languishing in foster care while termination proceedings drag on and on." *In re Boursaw*, 239 Mich App 161, 176-177; 607 NW2d 408 (1999), overruled in part on other grounds *In re Trejo*, 462 Mich 341 (2000). Given the time that has passed since respondent's parental rights were terminated, determined efforts will need to be made towards reunification. *In re Boursaw*, *supra* at 177-178.

Accordingly, we hold that the trial court clearly erred in finding that there was clear and convincing evidence to support the statutory grounds for termination of respondent's parental rights. Based on this conclusion, we do not reach respondent's issue of whether termination was

[2] At the time of the writing of this opinion, the twins would have just turned two years old.

clearly not within the children's best interests.

Reversed and remanded. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray